

# UNITED STATES FEDERAL COMMUNICATIONS COMMISSION

---

In the Matter of: )

VERIZON & SBC v. ASCENT )  
& PACE, )  
LOCAL CIRCUIT SWITCH UNE )  
CARVE-OUT DEBATE )

Docket No.:  
96-98

RECEIVED

NOV 29 2000

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Volume: 1

Pages: 1 through 91

Place: Washington, D.C.

Date: November 17, 2000

No. of Copies rec'd 3  
List A B C D E

---

## HERITAGE REPORTING CORPORATION

*Official Reporters*

1220 L Street, N.W., Suite 600  
Washington, D.C. 20005-4018

(202) 628-4888

[hrc@concentric.net](mailto:hrc@concentric.net)

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In the Matter of: )  
 )  
VERIZON & SBC v. ASCENT ) Docket No.:  
& PACE, ) 96-98  
LOCAL CIRCUIT SWITCH UNE )  
CARVE-OUT DEBATE )

Room 5-B516  
FCC Building  
445 Twelfth Street, S.W.  
Washington, D.C.

Friday,  
November 17, 2000

The parties met, pursuant to notice, at  
2:06 p.m.

APPEARANCES:

COMMISSION

Ms. Dorothy Atwood  
Ms. Michelle Carey  
Mr. Jon Reel  
Mr. Glenn Reynolds

PANEL

Mr. Dana Crowne,  
Allegiance Telecom, Inc.  
Mr. Thomas Jones,  
Willkie, Farr & Gallagher  
for Allegiance Telecom, Inc.  
Ms. Mary Albert,  
Allegiance Telecom, Inc.  
Mr. Augie Trinchese,  
Verizon Communications, Inc.  
Mr. Jon Banks,  
BellSouth  
Ms. Kathie Levitz,  
BellSouth  
Mr. Dave Scott,  
Birch Telecom  
Ms. Genny Morelli,  
Pace Coalition  
Mr. Joe Gillan,  
Pace Coalition  
Mr. Charles Hunter,  
Ascent Network Services  
Mr. Ed Shakin,  
Verizon Communications, Inc.  
Mr. Gary Phillips,  
SBC Communications, Inc.

P R O C E E D I N G S

(2:06 p.m.)

MS. ATWOOD: Okay. Let's get started. I think it would be useful, since we're transcribing this, to identify who you are and who you're representing for the transcript, so that those that read this afterwards know who we are. For the FCC, it's Dorothy Atwood.

MS. CAREY: Michelle Carey.

MR. REEL: John Reel.

MR. REYNOLDS: Glen Reynolds.

MR. CROWNE: My name is Dana Crowne. I'm with Allegiance Telecom.

MS. ATWOOD: And I should say this. If we could speak clearly into the microphone.

MR. JONES: Thomas Jones, Wilkie Farr, for Allegiance.

MS. ALBERT: Mary Albert, also with Allegiance Telecom.

MS. LEVITZ: Kathie Levitz, Bell South.

MR. BANKS: Jon Banks, Bell South.

MR. SCOTT: Dave Scott, Birch Telecom.

MS. MORELLI: Genny Morelli, on behalf of the Pace Coalition.

MR. GILLAN: Joe Gillan, on behalf of the Pace Coalition.

1 MR. HUNTER: Charles Hunter, on behalf of Ascent.

2 MR. TRINCHESE: Augie Trinchese, Verizon  
3 Communication.

4 MR. SHAKIN: Ed Shakin, Verizon.

5 MR. PHILLIPS: Gary Phillips, SBC.

6 MS. ATWOOD: Great. Well, thanks for coming. I  
7 want to some spend a bit of time just getting some  
8 preliminary arguments out of the way and understanding --  
9 we've had you come in and talk to us separately. We've got  
10 a lot of record on this proceeding. And one thing seems to  
11 be fairly uniform, and that is that no one likes the order  
12 as it stands, and that there are three moving parts, as I  
13 can tell, to the order now that we've discussed, that  
14 parties have brought to our attention.

15 The first moving part is whether we got it right  
16 with limiting it to the MSA -- Zone 1 top 50 MSAs. The  
17 other moving part is that we adopted the four-or-more line  
18 count, whether we got that right. And then, the other piece  
19 of this is the association with the EEL and the carve-out  
20 would be only available where the EEL was available. And so  
21 I guess it would be useful to just hear a little bit -- and  
22 I realize these will be general statements and we're going  
23 to get into the meat of each of these -- but just hear  
24 generally a few minutes from each side about kind of where  
25 you stand on each of those I mentioned and what you're

1 asking this Commission to consider. And I don't know who  
2 would like to go first. Why don't we start with you guys.

3 MR. PHILLIPS: First, I think that, even among  
4 many of the CLECs, I think that favor more stringent  
5 unbundled switching requirements, there seems to be  
6 agreement that the Zone 1 restriction was arbitrary and  
7 should be eliminated. Speaking for SBC, the Zone 1  
8 restriction means that unbundled switching relief would be  
9 potentially available in 64 out of our 3,000-plus wire  
10 centers, meaning about 2 percent of our wire centers. Those  
11 wire centers serve only one-sixth of the business lines in  
12 the top 50 MSAs and 3 percent of our lines overall, so it  
13 gives us virtually nothing.

14 And we think that the larger picture, it's  
15 arbitrary, because the zones were established by companies  
16 based on criteria that have really very little to do with  
17 the issue before the FCC today. Some companies made their  
18 decisions to establish zones based on circumstances that  
19 really have nothing to do with this and, therefore, there's  
20 a wide disparity, even among the ILECs as to how central  
21 offices were classified. I think in the case of Bell South,  
22 the zones are not even on a wire-center-by-wire-center basis  
23 but on a geographic basis. So there's a disparate impact  
24 among the ILECs Zone 1 requirement and we think it clearly  
25 needs to be eliminated.

1           With respect to the four-line cutoff, we think  
2   that certainly there is no basis in the record for raising  
3   that. We think that a cleaner, more logical cutoff would be  
4   just a clean, biz-res split. And with respect to the EEL,  
5   we think that there should be no requirement that there be  
6   relief conditioned on the availability of the EEL.

7           MS. ATWOOD: Okay. You guys want to --

8           MR. TRINCHESE: For Verizon, I won't spend much  
9   time on Zone 1. Obviously, we don't support a Zone 1  
10   restriction. It wasn't intended to deal with UNEs or the  
11   provision of unbundled switching. It was an access  
12   structure and really has no relationship to UNEs at all, and  
13   we favor doing away with the restriction. As far as the  
14   four-line or more limit, our experience and our data has  
15   demonstrated to us that platform or unbundled switching is  
16   not being used to serve the business market. It's being  
17   served by, primarily, other carrier switches. There is  
18   switching available, and we'd like to see the restriction go  
19   away, in favor of res-biz split.

20           As far as the EEL goes, we don't believe that the  
21   EEL is -- should be a requirement of the unbundled -- the  
22   switching limitation. Rather, that it shouldn't have any  
23   relationship to it at all. And we have a pending court case  
24   in front of us that talks about new combinations, which  
25   hasn't been decided yet. It can create some problems with

1 making it a requirement of unbundled switching.

2 MS. ATWOOD: Okay.

3 MR. HUNTER: On behalf of Ascent, I'd agree with  
4 Gary to one extent, that I do believe that Zone 1 is  
5 arbitrary to the extent that we think the Commission got it  
6 right to start with, that a lack of unbundled switching  
7 impairs, and clearly impairs, our members' ability to  
8 compete in the market. So, to the extent that there's a  
9 change in the geographic area, we think the geographic area  
10 should be shrunk to nothing. That is, it hasn't been our  
11 position on reconsideration, but that's where we would like  
12 this thing to come out.

13 With respect to four or more lines, we do think  
14 that --

15 MS. ATWOOD: So, therefore, it isn't your  
16 position, then.

17 MR. HUNTER: Excuse me?

18 MS. ATWOOD: If it's not your position --

19 MR. HUNTER: It's -- I mean, it's what our  
20 preference would be, particularly given the way the market  
21 has turned over the last six months. With respect to four  
22 or more lines, we do believe that was arbitrary, that there  
23 is no rational relationship to where the impairment would be  
24 if an impairment exists. We think the only rational linkage  
25 is to the T-1 facility. We think that that level should be



1 increased to the T-1 facility. Absent increasing it to that  
2 kind of an, either a line threshold or physical facility  
3 threshold, our members are denied access -- denied viable,  
4 realistic access to their historically targeted market.

5 Our members, essentially, are small carriers that  
6 serve small business. UNE-P, effectively, is the only means  
7 -- viable means, by which our members can reach that market.

8 MR. GILLAN: On behalf of the Pace Coalition, I  
9 guess I'm going to take them in the following order. With  
10 respect to the line count, our fundamental view of this is  
11 that there is a digital divide in terms of people's ability  
12 to provide competitive services and that, fundamentally,  
13 analog lines are more efficiently served over UNE-P. When a  
14 customer gets large enough to be served on digital  
15 facilities then people can provide -- find other ways of  
16 meeting it. So, in terms of the four lines, we think it  
17 needs to be changed because it doesn't track correctly the  
18 break point between analog and digital services.

19 With respect to Zone 1, I'm going to have to  
20 disagree with Gary. I don't think there's unanimity that  
21 Zone 1 was arbitrary. In fact, I think that there was a  
22 logical basis for Zone 1, even though we no longer think  
23 that you necessarily need to apply it.

24 And here's the logic: In a world where customers  
25 can use their own facilities to serve digital customers, the

1 question arises as to where are concentrations of DS-1  
2 customer located? And while the zones were not created for  
3 UNE purposes, they were created to answer a very similar  
4 question. When the Commission granted the ILECs pricing  
5 flexibility for special access services -- services that are  
6 defined very much by the DS-1 break point, those are DS-1  
7 customers -- it told the ILECs that they could come back  
8 with pricing flexibility plans that gave them pricing  
9 flexibility for these dense concentrations of DS-1  
10 customers.

11 So, in terms of its usefulness, it's not an  
12 arbitrary conclusion, it was a conclusion that basically  
13 said the ILECs have told us this is where concentrations of  
14 DS-1 customers are, this is where we don't think it's  
15 necessary for switching to be available. Now, the ILECs may  
16 have applied all that logic arbitrarily, and so that the  
17 result has nothing to do with concentrations of DS-1  
18 customers, but there was a logical tie.

19 That said, as a practical matter, we have taken  
20 the position that if a line count increases to match this  
21 break point between analog and digital service, then you  
22 don't need to focus exclusively on those end offices inside  
23 these large cities where their customers were concentrated,  
24 because carriers can reach out from those end offices and  
25 serve other DS-1-and-above customers in the city, and that

1 the rule can be expanded in that sense, so that DS-1-and-  
2 above customers in the entire city would be subject to the  
3 ULS restriction.

4 Now, does that mean you're tied to an EEL? No,  
5 not in our view. Only because, realistically, the EEL that  
6 people were talking about in the environment leading up to  
7 this restriction was an unrestricted EEL that could be used  
8 for anything, and as a result of things that happened since  
9 then, the EEL really is nothing more than a special access  
10 circuit that a carrier can order and then roll if it meets  
11 the test. And that obligation exists outside the MSA,  
12 inside the MSA, with or without switching. There's no real  
13 reason to -- there is no tie any longer between what you're  
14 allowed to buy and whether they took switching on or off the  
15 table.

16 So, as far as we're concerned, just view it as  
17 separately, address it separately. The switching carve-out  
18 -- look at where are, you know, what type of customers can  
19 people serve efficiently? Our view is it's analog versus  
20 digital, and the best break point is just, has the customer  
21 obtained digital service at DS-1 or should you do some  
22 approximation of the line count?

23 MS. ATWOOD: Which would be?

24 MR. GILLAN: Our analysis is around 20 lines.  
25 Quite frankly, we'd still tell you the cleanest, simplest,

1 most effective way is to just trust the customer. When they  
2 want a DS-1, they will buy one. And then, just don't let  
3 carriers buy a DS-1 from the ILEC and connect it to a DS-1  
4 switch port. And you get, effectively, the same outcome  
5 without going through all this approximation. But we  
6 recognize that some customers that have not yet got a DS-1  
7 perhaps could be served by a DS-1. It happens every day,  
8 and so, we've gone through this process of approximating it  
9 for you.

10 MS. ATWOOD: Okay. I have questions for all of  
11 you.

12 MR. SCOTT: I'm Dave Scott with Birch Telecom, and  
13 it probably bears describing a little bit about Birch,  
14 because many of you may not be familiar with it. We're a  
15 CLEC that has traditionally served underserved markets, and  
16 so, you'll find us serving a few large metro areas, like  
17 Allegiance, but most of what we do is serve smaller places  
18 than that. We serve 23 cities, we have approximately a  
19 quarter-million access lines of service, we have residential  
20 accounts, we have business accounts. Our average line size  
21 is about five. And about 72 percent of our accounts are  
22 residential one-, two- and three-line accounts.

23 The platform in the availability of the switch  
24 port has been absolutely essential in the growth of our  
25 business.

1 MS. ATWOOD: You said your predominant business is  
2 residential one, two, three or residential and --

3 MR. SCOTT: No. Residential accounts and small  
4 business, one, two and three size. From our perspective,  
5 using the platform to serve customers is essential for the  
6 viability of competition in these market segments. We can  
7 get into a lot of the reasons for that. Some of them are  
8 economic. Some of them are operational. But from our  
9 perspective, any limitations on that erode our capability of  
10 going in and serving these markets. We also see that the  
11 line limitation is probably the worst piece of it, from our  
12 perspective. Operationally, it's very hard to deal with.  
13 I'll give you an example. We have a three-line customer,  
14 and now they order the fourth line. What do we do? So, I  
15 guess that's the part of this that's been the most difficult  
16 for us, and we would agree with Joe that we really think the  
17 cleanest cutoff point is at a T-1 level, and so, we strongly  
18 encourage that.

19 I think that as we get into this debate, the jury  
20 is still very much out on the viability of competition using  
21 a smart-build approach, using single lines below the T-1  
22 level. And in particular, given how our industry is  
23 absolutely being battered in the financial community, I  
24 think this is an important issue for the FCC. It's pivotal.  
25 And right now, I think the jury's out on whether competition

1 for the mass market -- and when I say mass market, I mean  
2 residential and small business -- will be viable. I believe  
3 the availability of the switchboard to be at the heart of  
4 that.

5 MS. ATWOOD: Can I just ask -- and I promised I  
6 was going to ask everyone separately, but I just can't  
7 resist because we just talked about the viability of the  
8 market. From what I've heard from at least SBC and Verizon  
9 -- and we haven't gotten to Bell South yet, I'm not sure if  
10 you guys are going to talk or were intending to talk. I'm  
11 sure you will -- but I'm hearing them say there's a general  
12 understanding that they're not talking about going -- that  
13 there still is and ought to still remain an impairment in  
14 terms of switching for residential markets. Right? Is that  
15 correct? So, in terms of having a platform available for  
16 the residential market and in terms of the concerns you've  
17 expressed, it's a viable entry strategy for the residential  
18 market, at least my understanding of the record that's been  
19 developed in this recon, has been, in fact, that's not  
20 really contested. What we're really talking about is the  
21 small business market.

22 MR. SCOTT: Yeah, our focus has been on the small  
23 business market. I'll go on to say that I think you're  
24 going to greatly limit competition for residential, as well.  
25 The fixed cost of getting in and serving the mass market.

1 We spend, in Birch's case, approximately \$100 million on  
2 systems. And so, when we go in and market service, it's  
3 essential for the way we do business in the mass market that  
4 we get as many customers as possible. It's why we've chosen  
5 to serve large and small markets, residential and business  
6 subscribers both.

7 So if we are impaired from going in and serving  
8 the small business market, you will see an effect on the  
9 residential market, as well.

10 MS. ATWOOD: Well, okay. You would be -- in order  
11 to have the platform, we have to determine if you are, in  
12 fact, impaired, not that failing to give you the platform  
13 impairs you.

14 MR. SCOTT: Right.

15 MS. ATWOOD: There's a difference. But okay, I  
16 understand. And thanks for coming, too, to give us the  
17 company's --

18 MR. BANKS: John Banks, with Bell South. I guess  
19 we'll have to say something. Just briefly -- and our reason  
20 is that we've lost very substantial numbers of small  
21 business lines to CLECs. And a very substantial percentage  
22 of the market has been lost to CLECs. The CLECs that have  
23 taken these lines and this market share have used UNE loops  
24 with their own switches, with their own loop facilities.  
25 So, if the debate's about impairment, we've successfully

1 lost an awful lot of the market share to CLECs that don't  
2 use our bundled switching or UNE platforms to serve distant  
3 cities.

4 So we feel that the switching exemption would be  
5 much more sensibly drawn between business and residential.  
6 And based on the market facts, I think even the Zone 1  
7 restriction isn't linked to the impairment that CLECs might  
8 have, because we've lost share in the major downtown areas  
9 and Tier 2 cities and throughout the region. We think that,  
10 really, the UNE switching should be available for  
11 residential customers and not for business customers, and  
12 that's the only distinction that should be drawn.

13 MR. CROWNE: As I said before, I'm from Allegiance  
14 Telecom, and what I'd like to do is just give you a few  
15 words on our experiences. Allegiance started operations in  
16 August of 1997, and we did our first hot cut onto an  
17 unbundled loop about eight months following that. We are  
18 currently in 26 of the top 50 MSAs, and by the end of next  
19 year, we expect to be in another 10 of that same list of the  
20 top 50 MSAs. Our provisioning methods are almost  
21 exclusively unbundled loops into our own switching  
22 facilities, and we target primarily small and medium-sized  
23 businesses.

24 Should I pass these around? This should give you  
25 an idea of kind of what we're doing, what our experience is



1 for the customers that we are putting onto unbundled loops.  
2 And I think some of this is pertinent to the discussion. I  
3 also find myself in the awkward position of tending to agree  
4 with our friends in the -- so if I begin to stutter at  
5 times, you're going to have to forgive me in that regard.

6 Basically, what this says is that 87 percent of  
7 our customers have 10 lines or less. In fact, what it  
8 doesn't say on here is that a significant percentage of  
9 those customers are actually less than three lines, that we  
10 have had a great deal of success hooking up customers using  
11 unbundled loops and also getting them a cut onto our  
12 network, although there are certainly issues in that regard.

13 The question regarding whether the economic  
14 boundaries -- obviously, there's a density issue. On the  
15 top, the DMSAs -- to take your three pivotal items in order.  
16 We're typically in the more dense markets, and we're in the  
17 more dense parts of those markets. And so, whether or not  
18 that boundary is arbitrary, I don't know. I can tell you  
19 that in some of the wire centers that we're in, we are  
20 experiencing less density than just the Zone 1, and we are  
21 experiencing a sufficient number of lines to make it a  
22 viable business.

23 In regards to your question regarding whether  
24 three lines or four lines is the right number, our economies  
25 on unbundled loops are basically per -- our fixed elements

1 are per wire center, if you will, so, whether or not it's  
2 two customers with two lines or one customer with four  
3 lines, there are some differences in what our economies  
4 would be. However, typically, that's minor. So, we don't  
5 really see a reason for there to be a difference between a  
6 three-line and a four-line customer.

7 I can tell you that I also disagree with the  
8 assertion that the break point between DS-1 customers and  
9 DSO customers is at 20. Our numbers tend to be anywhere  
10 from eight to 10. That's highly sensitive to unbundled loop  
11 rates, and DS-1 costs, with there being more options on DS-1  
12 than there are on unbundled loops, obviously. So we don't  
13 see a logical split at three or four, necessarily. In fact,  
14 I would see no reason to differentiate other than the biz-  
15 res.

16 MS. ATWOOD: When you say eight to 10 lines, do  
17 you mean that you'll move over to a T-1 with a customer who  
18 wants eight lines?

19 MR. CROWNE: Yeah. In practice, right now, we're  
20 doing it at 12. We've talked internally about lowering that  
21 to 10, and we have, in some jurisdictions, proved to  
22 ourselves that we could do it cost effectively at eight.  
23 However, like I said, that's highly sensitive to the current  
24 trends on unbundled loop costs.

25 MS. ATWOOD: And are you finding, just as your

1 business case, are you entering through UNE loop and then,  
2 once the lines are up at a certain level, moving them over  
3 to a T-1, or are you finding there are T-1 customers that  
4 come in --

5 MR. CROWNE: We kind of do all of that, if you  
6 will. We've -- generally speaking, an existing analog  
7 customer is kept as an existing analog customer, and an  
8 existing T-1 customer is kept as an existing T-1 customer.  
9 However, we've had a great deal of success recently in  
10 integrated access devices that will be provisioned over.  
11 Some combination of DS-1 facilities or DSL facilities on an  
12 integrated access device, and that has brought that  
13 crossover point down because there's a lot of new equipment,  
14 DSL technology.

15 MS. ATWOOD: Okay.

16 MR. CROWNE: So, we're actually exploring in one  
17 option, right now, bringing that down all the way to four  
18 lines for that crossover point, but that has yet to be  
19 proven out. We haven't intentionally marketed a conversion  
20 like you're describing. In regards to kind of the time  
21 frame it takes to enter a market in this -- like I said, it  
22 was eight months before we did our first hot cut of an  
23 unbundled loop. We have, currently of those 26 markets that  
24 we're in, four of them are at EBA-Dow (phonetic) positive.  
25 We expect another four or about eight of those markets to be

1 at EBA-Dow positive or a cash flow break even by the end of  
2 next year. Those markets came up one at a time over the  
3 course -- since kind of the middle of '98 till now.  
4 Typically, we've found that those markets are nearing break  
5 even at something less than 20 months.

6 MR. JONES: You actually meant the end of this  
7 year. The eight markets --

8 MR. CROWNE: By the end of this year. I'm sorry.  
9 Thanks. Twenty months as being the key, the sort of  
10 parameter that we're seeing. So, you know, although there  
11 are certainly some issues regarding hot cut, and most of  
12 that procedural in nature, and getting the systems  
13 developed, it certainly is a workable, viable business  
14 model. In regards to EELs, I'm afraid I don't have much  
15 opinion on that. We haven't any experience with EEL  
16 provision.

17 MS. ATWOOD: Okay. I have questions about hot  
18 cuts that I want to talk to you guys about, so I'll use that  
19 as a segue in just a second, but from what I've heard in the  
20 general discussion, there isn't anyone in this room -- I  
21 just want to make sure I've got it right -- that supports  
22 our continuing restriction on the EEL, because of -- maybe  
23 it's for different reasons, but there is nobody in this room  
24 that really supports a continuing association with the EEL.  
25 Am I right on that? Okay. And then, I also heard -- and

1 I'm not exactly sure this is your position -- I heard some  
2 support for retaining the Zone 1. I didn't hear anybody  
3 say, however -- challenge our 50 MSA. I heard a challenge  
4 to the zone within the MSAs, but I didn't hear a challenge  
5 to the selection of 50 MSAs. In other words, some  
6 geographical limitations. Now, I think you have a different  
7 position, don't you?

8 MR. TRINCHESE: Yes.

9 MS. ATWOOD: But I want to make sure I have the  
10 record right.

11 MR. TRINCHESE: Our position, if the carrier is  
12 not impaired based on some logic of switching being  
13 available, whether it would be that there is switching  
14 available, they can get access to loops, they have  
15 co-location -- whether it's in the top 50 MSAs or any  
16 geographical area, the limitation should be lifted. We've  
17 demonstrated and put on the record that there are sufficient  
18 -- there are significant switches, as well as significant  
19 rate centers being served by CLECs outside the MSA to the  
20 extent that some of the areas outside the MSAs have as many  
21 switches and rate centers being served by CLEC switches that  
22 the 50 MSAs have.

23 So, depending on how many, you know, where the  
24 logical point is -- one switch, two switches, three switches  
25 -- there is a difference, but there is switching available,

Heritage Reporting Corporation  
(202) 628-4888

1     there is competitive switching available, we are being  
2     competed with, with CLEC switches outside of the 50 top  
3     MSAs, and we feel that you should take into consideration  
4     not a geographical restriction, but where CLECs have  
5     switches, have obtained NXX codes and are serving customers.

6             MS. ATWOOD: And what is the number of switches  
7     that they have? I believe our order talked about four  
8     switches. I mean, how do you determine that, if there's no  
9     geographical limitation or a presumption that a certain  
10    amount of -- because I believe that the original order, in a  
11    sense, made a presumption that there were a certain number  
12    of facilities in geographical restrictions. I mean, how  
13    would we --

14            MR. PHILLIPS: In an MSA?

15            MS. ATWOOD: In an MSA, yeah. And, of course, in  
16    Zone 1, too. But how would we approximate the standard that  
17    you're describing?

18            MR. TRINCHESE: Well, our position is that if a  
19    CLEC provides switching in an MSA, it's not impaired and  
20    other CLECs are not impaired who provide the switching.

21            MS. ATWOOD: So one switch.

22            MR. TRINCHESE: One switch would be the logical  
23    break point. And I'm not sure of the order that you'd  
24    actually --

25            MS. ATWOOD: We rejected the one switch.

1 MR. PHILLIPS: Yeah. I mean, I could give a  
2 little bit of data on that point.

3 MS. ATWOOD: Okay.

4 MR. PHILLIPS: And I just want to elaborate on one  
5 point in response to the Zone 1. The zones were established  
6 years and years ago based on competitive conditions that  
7 existed at that time, and they were based on pricing  
8 decisions at the ILECs, which were a product of special  
9 access competition years ago. So, it is not true -- and I  
10 would disagree with Pace on this point -- that the  
11 circumstances that related to the establishment of the zones  
12 at that time, today, are relevant to the status of  
13 competition as it relates to the ULS question before you.

14 And I would just say that the proof, and I mean,  
15 sort of the facts, to me, are definitive on this point.  
16 When the condition was first established, Ameritech had 17  
17 wire centers, total, in its region in Zone 1, and Bell South  
18 had well over -- and GTE -- each had well over 100. Now,  
19 the status of competition in those regions certainly is not  
20 that disparate, was not that disparate, that there should  
21 have been such a disparate result. So I want to move off  
22 that point now.

23 Just in terms of where is competition, there are  
24 actually heavy pockets of competition outside the top 100  
25 MSAs, but if you look at the top, just focusing on the top

1 50, I'll give you some numbers in the top 100. In the top  
2 100, there are 40 MSAs in the SBC region that are in the top  
3 100 nationally. And in 35 of those 40, there are at least  
4 four CLEC switches, using the number that the FCC  
5 established. In the top 50 MSAs, there are 20. Twenty of  
6 the top 50 MSAs are in the SBC region. And there are at  
7 least four CLEC switches in all 20 of them. There are, in  
8 fact, at least nine CLEC switches in 19 out of the 20.

9 If you were going to move away from an MSA  
10 approach and move towards a how many CLEC switches are there  
11 in an MSA, if you went to a number like four, that would  
12 cover most of the top 100 MSAs, I think, if not all.

13 MR. SCOTT: I might want to point out, though, if  
14 we start looking at the level of competition, I really think  
15 it's completely unrelated to the number of switches. And I  
16 think I'll give a pretty vivid example of that. One of the  
17 switches that you count is in Kansas City, Missouri, and  
18 it's in SBC's territory owned by Birch Telecom. We do not  
19 use that for sub-T-1 traffic, because of difficulty in the  
20 economics of doing that is to the point that we actually use  
21 the platform to serve customers even where the switch is  
22 free. So, I think it's important to point out, in our view,  
23 that a correlation between the raw number of switches in a  
24 given market and the true level of competition, especially  
25 at the lower end of the market, is just not fair.



1           MR. PHILLIPS: Right. And our response would just  
2 simply be that I have no doubt that that is, in fact, your  
3 policy and your business decision, but it is not necessarily  
4 a business decision that reflects the practice of most  
5 CLECs. And I'll make one other point, and that is, it has  
6 been alleged in the record that when SBC goes out of region,  
7 SBC will be using the UNE-P to serve small- and medium-sized  
8 business customers. SBC strategy out of region is to put  
9 switches in, to put co-location in, and when we can reach  
10 our switch, we will serve that customer using unbundled  
11 loops or our own loops. If we're laying fiber, fixed  
12 wireless service, before we do -- before we use the UNE-P.

13           So, it is not true that we will be relying  
14 exclusively on the UNE-P to serve customers with DSO analog  
15 loops. If we can reach our switch, we'll serve a  
16 residential customer or a business customer using a bundled  
17 loop.

18           MR. GILLAN: I've really got to respond to that.

19           MS. ATWOOD: Yes.

20           MR. GILLAN: It's actually two things.

21           MS. ATWOOD: Okay.

22           MR. GILLAN: The first is buttressing Dave's point  
23 about the fact that you can't really look at a switch and  
24 tell what kind of track is on it. It doesn't -- the  
25 existence of a switch doesn't answer that. Measures that we

1 do have that try to give us aggregate market statistics,  
2 like traffic floats, as we shared with you, show that the  
3 switches that are deployed, measured at the market level,  
4 are heavily, heavily, heavily weighted towards inbound  
5 traffic, which we all know means that those switches are  
6 serving some specialized needs. I'm not -- we're not saying  
7 that they don't serve any end users -- that obviously would  
8 be an exaggeration -- but they are heavily focused in  
9 different market settings.

10           Secondly, it's not a question that it's Birch's  
11 isolated business judgment. We believe that the case is  
12 that the consensus business plan is to use switches at  
13 digital facilities and above. There are some outliers. We  
14 don't disagree. On the other hand, when you look at those  
15 outliers, you have to look more critically at their business  
16 plan than to just ask, for instance, can Allegiance serve  
17 some lines? Allegiance gets, from their 10-Q, about 43  
18 percent of their revenue from reciprocal comp and access  
19 charges that are substantially higher than the ILEC.

20           Now, whether that's a good business strategy or a  
21 bad strategy has nothing to do with my point. My point is  
22 that when you look at a company, if you're going to say that  
23 other carriers that have different focuses that are more  
24 interested in serving end users than in collecting access  
25 charge revenue -- whatever the case may be -- you can't make

1 a judgment as to whether they would be impaired simply  
2 because of an isolated instance of a carrier saying they've  
3 managed to do something, without looking at, well, how did  
4 you do it, what are the facts behind it?

5 Finally, with respect to SBC's out-of-business  
6 strategy, I don't believe anybody said that you were going  
7 to exclusively use UNE-P, and I certainly -- if we gave you  
8 that impression, we didn't mean to. However, your business  
9 strategy -- this is proprietary. It is certainly the case  
10 that a substantial element of that strategy was UNE-P-based  
11 for an extended period of time. And while it is possible  
12 for you to come to the FCC and indicate, we will do  
13 something in the future, you also have to be able to  
14 explain, I think, how is it that you can overcome these  
15 problems that other people have experienced? It isn't that  
16 you've got business strategy hasn't been tried and failed.  
17 It has been tried by a number of carriers.

18 And finally -- and then I'll turn it over, because  
19 I'm running out of oxygen here. It isn't just SBC. We can  
20 look at other ILECs who are here to tell you that they can't  
21 do -- that UNE-P isn't necessary. Verizon is being asked by  
22 the Pennsylvania Commission to split itself into a wholesale  
23 and retail arm. When they sat there and said well, gee, how  
24 will this retail arm provide service, the answer was UNE-P.  
25 GTE, the former -- before they became Verizon, entered the

1 market and tried to serve small business customers and  
2 exited it when they concluded that they couldn't do it on  
3 resale -- UNE-P wasn't available -- and when they recast  
4 themselves with a new business plan, they had moved away  
5 from the small business to the medium and large business on  
6 their own switch in San Francisco before abandoning that in  
7 favor of just becoming a larger incumbent.

8           It's not just us. They have a lot of money. They  
9 all have all these out-of-region states. They don't need to  
10 come and tell you that they intend to do or they can do or  
11 somebody else should do. They can do, but they haven't.  
12 And I just don't see -- you know, until somebody is able to  
13 show you market statistics of things other than negligible  
14 entry, or revenue streams that are unrelated to end users,  
15 that you should conclude that all this is actually so  
16 simple, when nobody's been able to do it.

17           MS. ATWOOD: Well, actually, can I just ask you --  
18 and not using confidential information, but I think one of  
19 the carriers has put on the record a showing that says there  
20 is fairly substantial loss in what would be considered to be  
21 the small business --

22           MR. GILLAN: Oh, thank you.

23           MS. ATWOOD: -- market, and that loss is  
24 attributed to -- at a time when the platform was not  
25 available, which would lead one to conclude that the

1 condition was such that somebody was able to lure those  
2 customers away.

3 MR. GILLAN: Okay. Well, without trying to  
4 divulge the confidential information, but if I start getting  
5 -- my assumption here is that methodology is not  
6 confidential, but the numbers themselves are confidential.

7 MR. BANKS: Certainly, pipe up.

8 MR. GILLAN: Okay. First, the definition of small  
9 business used, as I understand it, is a number greater than  
10 \$100,000 a year in telecom revenues. And we estimated out  
11 what kind of line count we're talking about, it was several  
12 hundred lines. So, that concept of small is, to us, very,  
13 very large.

14 Secondly, the measure of lines lost was the  
15 carrier just adding up every disconnect it had seen since  
16 the Act was passed. So, if in March 1996, they disconnected  
17 a hundred business lines, a hundred business lines were  
18 attributed lost to CLEC. And next month, if they lost 150  
19 business lines, 150 business lines were lost to CLECs. And  
20 they cumulatively added up every single one of these lines  
21 that has ever been disconnected and said lost to CLEC,  
22 without ever asking did the customer buy a different service  
23 from us, did the customer go into a different market.

24 There is no way -- this same carrier that reflects  
25 that it has, quote, "lost" all these cumulative lines has

1 its own program to migrate customers from switched access  
2 lines on the higher-speed facilities, which I believe shows  
3 up as a disconnect and then a new service, and is currently  
4 reporting that its equivalent business line growth is 40  
5 percent a year and has been at the 40 percent year for the  
6 last several quarters. There is no way that they're  
7 experiencing the kind of line losses that they're describing  
8 to you while at the same time they have programs to migrate  
9 those customers onto other facilities and that process is  
10 growing at 40 percent a year. It is completely bogus.

11 See, this is where you're supposed to say Joe,  
12 you're getting too far out. It's an extreme methodology to  
13 try and estimate the kind of losses that they're describing,  
14 and you can't draw any conclusion from it. And under a  
15 basis where they never look at whether the customer bought  
16 another service.

17 MR. BANKS: Okay. I'll say you're getting too far  
18 out. But I've talked to other CLECs about this, but Bell  
19 South put the information on the record. And just briefly,  
20 the revenue ceiling, it's relatively high, but that's just a  
21 ceiling. This includes all customers below there, and we've  
22 recently put on some more information that tries to slice it  
23 more finely so that you can exclude what you might think are  
24 upper-end business customers if you want and just look at  
25 the very lowest end. You know, the one- to four-line